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No. 98-1960

Supreme Court, U.S.
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In The

Supreme Court of the United States

CORTEZ BYRD CHIPS, INC.,

Petitioner,

v.

BILL HARBERT CONSTRUCTION COMPANY,
a division of Bill Harbert International, Inc.,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF FOR RESPONDENT

EDWARD P. MEYERSON
Counsel of Record
SUSAN S. WAGNER
BERKOWITZ, LEFKOVITS, ISOM & KUSHNER
A Professional Corporation
SouthTrust Tower
420 North 20th Street, Suite 1600
Birmingham, Alabama 35203-5202
(205) 328-0480

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Whether venue of an action to vacate or modify an arbitral award under 9 U.S.C. §§ 10 or 11 lies in any district other than "the district wherein the award was made."

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STATEMENT OF THE CASE

Respondent Bill Harbert Construction Company, a division of Bill Harbert International, Inc., an Alabama corporation, ("BHC") is in the business of commercial construction. J.A. 4. BHC's principal place of business is in the State of Alabama. J.A. 4. In 1995, BHC entered into a contract with Petitioner Cortez Byrd Chips, Inc., a Mississippi corporation, ("Cortez Byrd") to erect a wood chip mill in Mississippi. J.A. 5. The contract required arbitration of any disputes between the parties under the Construction Industry Dispute Resolution Procedures of the American Arbitration Association ("AAA"). J.A. 5. The contract further provided that the arbitral award "shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof." J.A. 5.

Having suffered excess expenditures, labor, and overhead as a result of actions by Cortez Byrd and its designer and fabricator, BHC filed a demand for arbitration on April 30, 1997, with the AAA's Atlanta, Georgia office. J.A. 5. The AAA determined that the proceeding should be conducted in Birmingham, Alabama. J.A. 5-6. In November 1997, the arbitration panel conducted a four-day hearing in Birmingham, Alabama, during which testimony, other evidence, and arguments were presented by both parties.[1] J.A. 5-6.

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[1] Cortez Byrd contends that during the arbitration proceedings "counsel for respondent admitted that written change orders were not executed" and insists that "transcripts of the hearings" would verify this admission. Pet. Brief 5 and n.1. No hearing transcript was filed in either of the district court

On December 10, 1997, the arbitration panel made an award in favor of BHC and against Cortez Byrd, J.A. 62-63, under which Cortez Byrd owes BHC a net sum of $274,256.90, together with post-award interest at the rate of 10% per annum, J.A. 6.

On January 13, 1998, Cortez Byrd filed an action in the United States District Court for the Southern District of Mississippi (the "Mississippi district court") seeking to vacate or modify the award. J.A. 21. Rather than providing a basis for vacatur within the limitations of 9 U.S.C. § 10, Cortez Byrd's complaint alleged only that the award was incorrect – that is, that the arbitrators' decision disregarded the "facts" and was contrary to the parties' agreement. The complaint characterized the arbitral award as "illogical," "irrational," "an exhibition of bad faith," "of a grievously flawed character," "arbitrary and capricious," and "constitut[ing] the arbitrators' own private brand of justice." J.A. 21-26.

Unaware of the Mississippi district court filing, BHC filed the present action in the United States District Court for the Northern District of Alabama (the "Alabama district court") on January 20, 1998, to confirm the arbitral award. J.A. 4. Cortez Byrd responded on February 27,

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proceedings, and, consequently, there is no transcript of record. No transcript was provided to BHC or the arbitrators, much less "agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding," as required by the AAA Construction Industry Dispute Resolution Procedures R-23. Moreover, the correctness of the arbitration award is not before this Court. Thus, Cortez Byrd's mischaracterization of the evidence before the arbitration panel is both inappropriate and unavailing.

1998 with an answer and counterclaim seeking vacatur of the award on the same grounds set forth in its complaint in the Mississippi district court. J.A. 8. Cortez Byrd also filed a motion to dismiss, transfer, or stay the Alabama district court action based on the pendency of the action in the Mississippi district court. J.A. 17. The Alabama district court denied this motion, holding it had exclusive jurisdiction over any action to confirm or vacate the award. Pet. App. 8a-10a.

On May 21, 1998, the Alabama district court confirmed the arbitral award and entered final judgment in favor of BHC. Pet. App. 11a-13a. The district court noted that Cortez Byrd "did not articulate a single legal ground pursuant to 9 U.S.C. § 10 by which the arbitration can be vacated (other than to plead, without evidentiary support, a "laundry list" of grounds in a purely conclusory manner)." Pet. App. 12a n.2.

Cortez Byrd complains in its brief – for the first time – that "the trial court entered judgment without permitting petitioner to submit any evidence. . . . " Pet. Brief 5 n.1. In fact, the record reveals no tender of evidence to the Alabama district court, no request for an evidentiary hearing, and no objection, by post-judgment motion or otherwise, that Cortez Byrd had insufficient time to make a record.[2]

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[2] Cortez Byrd's unfounded argument that it was not "permitted" to submit evidence is made in the hope that this Court will "take as true" Cortez Byrd's characterizations of the evidence presented to the arbitration panel. *See* Pet. Brief 5 n.1. Under *Walker Process Equip., Inc. v. Food Mach. & Chem. Co.*, 382 U.S. 172, 174-75 (1965), upon which Cortez Byrd relies for this

On appeal to the United States Court of Appeals for the Eleventh Circuit, Cortez Byrd did not challenge the Alabama district court's finding that it had failed to articulate a cognizable basis for vacatur of the arbitral award. Neither did Cortez Byrd contend that venue over BHC's confirmation action did not lie in the Alabama district court. Rather, Cortez Byrd argued only that the Alabama district court should have deferred to the Mississippi district court under the "first-to-file" rule. Cortez Byrd argued that venue was proper in both the Alabama and Mississippi district courts and that, because the Mississippi district court action was filed first, the "first-to-file" rule prohibited the Alabama district court from proceeding. The Eleventh Circuit Court of Appeals affirmed on the basis that the Northern District of Alabama was the exclusive forum for adjudication of the action. Pet. App. 1a.[3]

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position, an appellate court should "take as true" the allegations of a pleading dismissed by the trial court, where the issue on appeal is whether that pleading stated a cognizable claim. In this case, the only issues raised on appeal were venue and the "first-to-file rule." Thus, rather than "taking as true" Cortez Byrd's allegations of error in the arbitration proceedings, this Court should "take as true" the Alabama district court's determination that Cortez Byrd "did not articulate a single legal ground . . . by which the arbitration can be vacated. . . . " Pet. App. 12a n.2.

[3] At the time the Alabama district court entered judgment confirming the arbitral award, the Mississippi district court had neither entered any order confirming, modifying, or vacating the award, nor conducted any hearing for that purpose. On June 23, 1998, the Mississippi district court entered an order staying further proceedings pending issuance of a mandate by the Eleventh Circuit, and no further action has been taken in that case.

SUMMARY OF THE ARGUMENT

The meaning of statutory language cannot be determined in isolation, but must be read in the context of the statutory scheme as a whole. Comparing and contrasting FAA §§ 10 and 11 with parallel language in FAA §§ 4 and 9 establishes that Congress did not intend to authorize the filing of actions to vacate or modify arbitral awards either under the general venue statute or in any court designated in the arbitration agreement, but only in the district in which the arbitration award was made.

FAA § 4 expressly permits petitions to compel arbitration to be brought in any court that would have venue under the general venue statutes. The omission of this language from §§ 9, 10, and 11 must be regarded as intentional. By expressly authorizing the use of the general venue statute in § 4, but omitting such authorization from §§ 9, 10, and 11, Congress stated, in plain language, its intent for venue under §§ 9, 10, and 11 to be exclusive.

A similar analysis applies to the difference between the venue provision in § 9 and those of §§ 10 and 11. With respect to orders vacating or modifying an arbitration award, §§ 10 and 11 designate only the district in which the arbitration award was made. By contrast, § 9 permits the parties to provide in their arbitration agreements for the appropriate forum to confirm the award.

The use of the word "may" in §§ 10 and 11 does not support the argument that their venue provisions are permissive. §§ 10 and 11 provide that the specified court "may" vacate or modify the award, not that the parties "may" select the forum, and thus these sections do not suggest any discretion in the choice of forum. Moreover, a

number of other federal statutes have employed the word "may" to define and restrict jurisdiction and venue.

The FAA was modeled after a New York statute which, unlike the FAA, expressly provided for broad venue. By striking the broad venue provisions of the New York statute, which permitted judgment to be entered in "any county," and replacing them with the designation of only a single district court, Congress evidenced a clear intent to restrict venue.

The FAA was enacted to overcome the widely held view that arbitration awards were not enforceable in courts of law. The Act declared a national policy favoring arbitration and established a body of procedural rules for implementation of this policy in federal courts. In short, the FAA sought, not to broaden or restrict venue, but to define it in the first instance. Where venue is defined by the same statute that creates the right, such venue generally is intended to be exclusive.

The statutory policy of rapid and unobstructed enforcement of arbitration agreements established by the FAA is best served by exclusive venue of actions to vacate or modify arbitral awards. The determination by the arbitrator (or agreement of the parties) as to the most convenient forum should not be relitigated in district court.

Exclusive venue under §§ 9 and 10 of the FAA does not lead to "absurd results." Once a court proceeding under the FAA is instituted in the appropriate forum, venue is not forfeited by later proceedings. Therefore, a court entering a stay order under § 3 may later issue an order confirming or vacating an arbitration award, regardless of where the award was made.

Where specific venue statutes are intended to be exclusive, they cannot be supplemented by amendments to general venue statutes, absent a "clear intention" to do so. No post-1925 venue statute or amendment expresses any intention to modify the exclusive venue provisions of §§ 10 and 11 of the FAA.

ARGUMENT

Although this case was filed pursuant to § 9 of the Federal Arbitration Act (the "FAA" or the "Act"), 9 U.S.C. § 9 (Pet. App. 19a), only the venue provisions[4] of §§ 10 and 11, 9 U.S.C. §§ 10, 11 (Pet. App. 20a – 21a), are at issue here. Venue of this action unquestionably was proper, because the complaint was filed in "the United States court in or for the district within which [the arbitration] award was made," as provided in § 9. The question presented by this case is whether Cortez Byrd's complaint seeking vacatur or modification of the award under §§ 10 and 11 of the FAA was properly filed in the Mississippi district court. §§ 10 and 11 specify only that "the United States court in and for the district wherein the award was made may make an order" vacating, modifying, or correcting an arbitration award. Because the Southern District of Mississippi was not the situs of the arbitration proceedings, the issue is whether the designation of a particular court in §§ 10 and 11 is exclusive or

[4] Although some decisions speak in terms of "jurisdiction," it is now well settled that these sections establish venue, not subject matter jurisdiction. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983).

whether it may be supplemented by the general venue statute, 28 U.S.C. § 1391.

Because the venue provisions of §§ 10 and 11 are exclusive, venue over Cortez Byrd's complaint seeking to vacate or modify the arbitration award does not lie in the Mississippi district court, and the Alabama district court properly disregarded that prior action in confirming the arbitration award. Even if the venue provisions of those sections were interpreted as permissive – that is, as merely supplementing the general venue statute, 28 U.S.C. § 1391 – venue still would lie in the Northern District of Alabama under FAA §§ 9, 10, and 11. In that event, however, an issue would arise as to whether the Alabama district court should have deferred to the Mississippi district court under the "first-to-file" rule. Because Cortez Byrd's Petition raised only the venue issue, the Alabama district court's discretion under the first-to-file rule will not be addressed in this brief.

The Circuit Courts are divided as to whether §§ 9, 10, and 11 provide for permissive or exclusive venue.[5] Like Cortez Byrd, courts finding these provisions to provide permissive venue reason that Congress's intent is revealed by the "plain meaning" of the word "may," and they posit that an exclusive reading of the provisions would lead to "absurd results." In fact, Congress's intent is revealed by the "plain language" of the statute as a whole, not by any single term. By comparing the venue provisions of §§ 10 and 11 with those of §§ 4 and 9 and

[5] Invariably, courts fail to differentiate between §§ 10 and 11, on the one hand, and the more permissive language of § 9, on the other.

applying established rules of statutory construction, it is clear that Congress intended the venue provisions of §§ 10 and 11 to be exclusive. The legislative history and purposes of the Act invariably lead to the same conclusion. Finally, there is no basis to conclude that any post-1925 amendments to the general venue statute, 28 U.S.C. § 1391, were designed to override this intent.

I. THE PLAIN MEANING OF THE STATUTORY LANGUAGE, READ IN CONTEXT, ESTABLISHES THAT THE VENUE PROVISIONS OF §§ 10 AND 11 WERE INTENDED TO BE EXCLUSIVE

Although the " 'starting point in every case involving construction of a statute is the language itself,' " *Watt v. Alaska*, 451 U.S. 259, 265 (1981) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975)), "it is a 'fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used,' " *Textron Lycoming Reciprocating Engine Div., Avco Corp. v. United Auto., Aerospace, Agric. Implement Workers of Am., Int'l Union*, 523 U.S. 653, 118 S. Ct. 1626, 1629 (1998). Moreover, "[j]ust as a single word cannot be read in isolation, nor can a single provision of a statute." *Smith v. United States*, 508 U.S. 223, 234 (1993). "Statutory language must be read in context and a phrase 'gathers meaning from the words around it.' " *Jones v. United States*, 119 S. Ct. 2090, 2102 (1999) (quoting *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)). In short, " 'statutory construction is a 'holistic endeavor.' A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory

scheme. . . . " *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988).

Indeed, even if a word or phrase can have more than one meaning out of context, the provision is not ambiguous if its meaning is made clear by other provisions of the statute: "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Considering the language of the statute as a whole, the meaning of the venue provisions in §§ 10 and 11 is clear. In particular, comparing and contrasting these sections with parallel language in §§ 4 and 9 establishes that Congress did not intend to authorize the filing of actions to vacate or modify arbitral awards either under the general venue statute or in any court designated in the arbitration agreement, but only in the district in which the arbitration award was made. No contrary intention is indicated by the use of the word "may."

A. Comparison of §§ 10 and 11 with §§ 4 and 9 of the FAA Discloses Congress's Intent To Restrict Venue of Actions To Modify or Vacate Arbitration Awards

The clearest indication of Congress's intent is found in the striking contrast between the venue provisions of §§ 10 and 11 and those of §§ 4 and 9. It is well established that " 'where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts

intentionally and purposely in the disparate inclusion or exclusion.' " *Bates v. United* States, 522 U.S. 23, 118 S. Ct. 285, 290 (1997) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)); *accord BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994). In *Russello*, the Court concluded, as to the RICO provisions at issue:

> We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.

464 U.S. at 23.

In this case, the language included in FAA § 4, but "omitted" in §§ 10 and 11 is the very language Cortez Byrd suggests should be implicit in all the venue provisions of the FAA. § 4 provided in pertinent part as follows:

> That a party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate . . . **may petition any court of the United States which, save for such agreement, would have jurisdiction under the judicial code at law, in equity, or in admiralty of the subject matter of a suit arising out of the controversy between the parties**, for an order directing that such arbitration proceed in the manner provided for in such agreement.

Former 9 U.S.C. § 4 (1925) (emphasis added) (quoted in *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263, 270 n.1

(1932)) (amended 1947 and 1954).[6] The "Judicial Code" is the name formerly applied to Title 28 of the United States Code, which contains the general venue provisions. Thus, under § 4 of the FAA, a petition to compel arbitration could be brought in any court that would have venue, absent the arbitration agreement, of a "suit arising out of the controversy between the parties." This language incorporating the general venue statutes was omitted from §§ 9, 10, and 11. Under the principles espoused in *Bates*, *Russello*, and countless other cases, this omission cannot be regarded as accidental.

It has been said that "[j]ust as one can speculate that Congress would have used stronger language [to provide for exclusive venue in FAA § 10], one can also surmise that if Congress had not intended to vest jurisdiction in one court it would have specified no court at all, or would have authorized 'any court of competent jurisdiction'. . . . " *Enserch Int'l Exploration, Inc. v. Attock Oil Co.*, 656 F. Supp. 1162, 1165 (N.D. Tex. 1987). As the language of § 4 illustrates, there is no such need for "speculation" or "surmise." By expressly authorizing the use of the general venue statute in § 4, but omitting such authorization from §§ 9, 10, and 11, Congress stated, in plain language, its intent for venue under §§ 9, 10, and 11 to be exclusive.

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[6] Current § 4 similarly permits the petition in "any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties." 9 U.S.C. § 4.

Moreover, the difference between the venue provision in § 9 and those of §§ 10 and 11 further demonstrates that Congress intended to limit venue of actions to vacate or modify arbitral awards to the district in which the award was made. With respect to orders vacating or modifying an arbitration award, §§ 10 and 11 designate only the district in which the arbitration award was made. By contrast, § 9 permits the parties to provide in their arbitration agreements for the appropriate forum to confirm the award.[7] Yet courts on both sides of this controversy have made the mistake of concluding that there is no basis for distinction among these provisions.[8]

The difference in the wording of § 9, on the one hand, and §§ 10 and 11, on the other, raises a question not previously addressed by the courts. If, as Cortez Byrd argues, Congress wished to expand venue by enactment of the FAA, why would it permit the parties to designate

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[7] Additionally, while §§ 10 and 11 use "may" in the sense of providing discretion to the designated court to modify or vacate the arbitration award, § 9 states that a party "may apply" to the court designated in the agreement or, in the absence of such an agreement, "may" make application in the district in which the award was made.

[8] *E.g.*, *Sutter Corp. v. P&P Indus., Inc.*, 125 F.3d 914, 919-20 (5th Cir. 1997) (§§ 9 and 10 both permissive); *In re VMS Sec. Litig.*, 21 F.3d 139, 145 (7th Cir. 1994) (§§ 9 and 10 both permissive); *Sunshine Beauty Supplies, Inc. v. United States Dist. Court*, 872 F.2d 310, 312 (9th Cir. 1989) (§§ 9 and 10 both exclusive). In *VMS*, the district court concluded that there was a "critical" difference in the language of §§ 9 and 10 and that while § 9 arguably could be permissive, § 10 could not. 21 F.3d at 142. While acknowledging that the wording of §§ 9 and 10 differs, the circuit court rejected the conclusion that the difference was "critical."

a forum for actions to confirm arbitral awards, but not for actions to modify or vacate them? The answer lies in the nature of these proceedings. A confirmation proceeding under § 9 is a summary proceeding to reduce the arbitration award to a judgment enforceable through execution or other collection proceedings. Once the award is authenticated, entry of a confirmation order is virtually a ministerial act. In sharp contrast, an action to modify or vacate an arbitral award under §§ 10 or 11 is a continuation of the dispute resolution process. While the scope of review is extremely limited, a proceeding under §§ 10 or 11 to vacate or modify an arbitration award is analogous to an appeal. Because an appeal generally must be filed in the same venue as the proceeding being challenged, it is not surprising that Congress deemed it appropriate for this same pattern to apply to review of arbitration proceedings and awards.

In any event, these differences in the sections of the FAA cannot be "ascribe[d] . . . to a simple mistake in draftsmanship." *Russello*, 464 U.S. at 23. Congress's omission from §§ 10 and 11 of the references to the general venue statutes and to any court designated in the parties' arbitration agreement is unmistakeable evidence that venue under §§ 10 and 11 is exclusive.

B. The Use of the Word "May" in §§ 10 and 11 Provides No Evidence of Congress's Intent

Rather than analyzing the statutory language in context, Cortez Byrd, like many of the decisions on which it relies, insists that Congress's intent is revealed by its use

of the word "may." This reliance is misplaced. As previously discussed, "a single word cannot be read in isolation" in interpreting a statute. With respect to the word "may," this Court has held:

> The word "may," when used in a statute, usually implies some degree of discretion. This common-sense principle of statutory construction is by no means invariable, however, . . . and can be defeated by indications of legislative intent to the contrary or by obvious inferences from the structure and purpose of the statute. . . .

United States v. Rodgers, 461 U.S. 677, 706 (1983) (citations omitted). The use of "may" in §§ 10 and 11 certainly cannot defeat the "obvious inferences" to be drawn from Congress's omission in §§ 10 and 11 of the broader venue provisions contained in §§ 4 and 9. Even if those differences could be disregarded, however, the use of "may" in §§ 10 and 11 would provide no insight into Congress's intentions as to venue.

As an initial matter, §§ 10 and 11 provide that the specified court "may" vacate or modify the award, not that the parties "may" select the forum. Thus, the word "may" does not "define which court is empowered to vacate an award," but "is properly employed to refer to the power or authority of the court to vacate an award." *Enserch*, 656 F. Supp. at 1165; *accord Tesoro Petroleum Corp. v. Asamera (South Sumatra) Ltd.*, 798 F. Supp. 400, 403-04 (W.D. Tex. 1992); *Soo Line R.R. Co. v. Chicago & N.W. Transp. Co.*, 737 F. Supp. 68, 69 (D. Minn. 1990). To illustrate, substitution of the "mandatory" terms "shall" or "must" in §§ 10 or 11 (*i.e.*, the designated court "*shall*

make an order") would eliminate the court's discretion without further restricting the venue.

Moreover, comparison of the FAA with venue provisions in other federal statutes does not suggest that Congress intended a permissive reading of the FAA. Courts finding the venue provisions of §§ 9, 10, and 11 of the FAA to be permissive often are suffering from the delusion that "when Congress intends for one specific district court to be the exclusive forum for a certain matter, it uses unambiguous language to express its intention." *P&P Indus., Inc. v. Sutter Corp.*, 179 F.3d 861, 869 (10th Cir. 1999).[9] In fact, a number of other federal statutes have employed the word "may" to define and restrict venue.[10]

The venue provision for patent infringement actions, at issue in *Stonite Prods. Co. v. Melvin Lloyd Co.*, 315 U.S. 561 (1942), and *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222 (1957), provided:

> Any civil action for patent infringement **may be brought** in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

[9] *Accord Apex Plumbing Supply, Inc. v. U.S. Supply Co.*, 142 F.3d 188, 192-93 (4th Cir.), *cert. denied*, 119 S. Ct. 178 (1998); *In re VMS Sec. Litig.*, 21 F.3d 139, 144 (7th Cir. 1994); *Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 706 (2d Cir. 1985), *cert. denied*, 475 U.S. 1067 (1986).

[10] Indeed, in *NII Metals Servs., Inc. v. ICM Steel Corp.*, 514 F. Supp. 164, 166 (N.D. Ill. 1981), one of the seminal decisions finding § 9 to be permissive, the court conceded that a permissive interpretation required "some strain on the normal reading of the first two sentences of § 9 – by treating the word 'may' in the second sentence as permissive and not exclusive."

28 U.S.C. § 1400(b) (emphasis added). In holding that this language was exclusive, this Court reasoned that the section

> was adopted to define the exact jurisdiction of the federal courts in actions to enforce patent rights and thus eliminate the uncertainty produced by the conflicting decisions on the applicability of the [general venue statute] to such litigation. That purpose indicates that Congress did not intend [this provision] to dovetail with the general provisions relating to the venue of civil suits, but rather that it alone should control venue in patent infringement proceedings.

Stonite, 315 U.S. at 565-66.

Similarly, this Court found the venue provision of the National Bank Act, 12 U.S.C. § 94, to be mandatory "despite the presence of what might be regarded as permissive language." *Citizens & S. Nat'l Bank v. Bougas*, 434 U.S. 35, 38 (1977). That section provides that suits against national banks "**may be had**" in the federal district court for the district where such association is established. 12 U.S.C. § 94 (emphasis added). This Court held that "[t]he phrase 'suits . . . may be had' was, in every respect, appropriate language for the purpose of specifying the precise courts in which Congress consented to have national banks subject to suit. . . . " *Mercantile Nat'l Bank v. Langdeau*, 371 U.S. 555, 560 (1963). The interpretation of this statute as exclusive was compelled by the "basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject . . . 'will not

be controlled or nullified by a general one, regardless of the priority of enactment.' " *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) (quoting *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974)).

Title VII of the Civil Rights Act of 1964 also provides for exclusive venue using the term "may." The venue provision of Title VII states that an action "**may be brought**" in certain venues related to the alleged violation, "but if the respondent is not found within any such district, such an action **may be brought** within the judicial district in which the respondent has his principal office." 42 U.S.C. § 2000e-5(f)(3) (emphasis added). This Court has found this provision to be exclusive. *E.E.O.C. v. Arabian Am. Oil Co.*, 499 U.S. 244, 256 (1991) (stating that § 2000e-5(f)(3) "provide[s] for venue only in" the designated districts). Circuit courts reaching this conclusion have reasoned that where venue is defined by the same statute that creates the right, it is intended to be exclusive. *Bolar v. Frank*, 938 F.2d 377, 378 (2d Cir. 1991) ("venue for Bolar's right of action is circumscribed by the very statute that gives her the right to sue in the first place"); *Stebbins v. State Farm Mut. Auto. Ins. Co.*, 413 F.2d 1100, 1102 (D.C. Cir.), *cert. denied*, 396 U.S. 895 (1969) ("The venue of the right of action here in suit was limited by the statute which created the right.").

As these examples illustrate, the assumption that Congress provides for exclusive venue only with unambiguous language is simply mistaken. In light of Congress's clear manifestation of intent through its disparate inclusions and omissions of broader language in §§ 4, 9, 10, and 11, the use of "may" in §§ 10 and 11 cannot be

regarded as creating an ambiguity, much less as proving a permissive intent.

II. THE LEGISLATIVE HISTORY AND PURPOSE OF THE FEDERAL ARBITRATION ACT ESTABLISH THAT ITS VENUE PROVISIONS WERE INTENDED TO BE EXCLUSIVE

The legislative history of the FAA offers little specific guidance in determining proper venue under §§ 9, 10, or 11. Neither the House report nor the Senate report discusses these sections at length, and neither addresses the issue of venue.[11] Two critical facts are revealed by the legislative history, however. The first is that the FAA was modeled after a New York statute which, unlike the FAA, expressly provided for broad venue. The second is that the venue provisions were enacted as part of the original legislation – that is, that venue was "circumscribed by the very statute that gives . . . the right to sue in the first place." *Bolar v. Frank*, 938 F.2d 377, 378 (2d Cir. 1991) (interpreting 42 U.S.C. § 2000e-5(f)(3)). These circumstances establish that exclusive venue was intended. Moreover, the policy of "rapid and unobstructed enforcement of arbitration agreements," *Moses H. Cone*, 460 U.S.

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[11] H.R. Rep. No. 68-96 (1924); S. Rep. No. 68-536 (1924). Cortez Byrd argues that the Congress's intention in enacting the FAA in 1925 is somehow disclosed by the legislative history of the 1970 legislation implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 201 *et seq.* Pet. Brief 15-16. This argument is defeated by this Court's ruling that "the view of a later Congress cannot control the interpretation of an earlier enacted statute." *O'Gilvie v. United States*, 519 U.S. 79, 90 (1996).

at 23, is best served by exclusive venue, which simplifies and streamlines post-arbitration proceedings.

A. Comparison of the FAA with the New York Statute After Which It Was Modeled Establishes an Intention To Restrict Venue

The FAA was drafted by a committee of the American Bar Association, H.R. Rep. No. 68-96 at 1 (1924), and "follows the lines of the New York arbitration law enacted in 1920," S. Rep. No. 68-536 at 3 (1924). The venue provisions of the two acts, however, are substantially different. The provisions in the New York statute that paralleled §§ 9, 10, and 11 authorized the "court specified in the submission [*i.e.*, the arbitration agreement]" to enter an order confirming, vacating, or modifying the award. Former N.Y. Civil Practices Act §§ 1456-58.[12] The New York statute further provided, however, that if no court was specified in the submission, "the judgment may be entered in any county." Former N.Y. Civil Practices Act § 1449. In contrast, FAA § 9 provides that in the absence of an agreement, an application to confirm the award may be made in the district in which the award was made. FAA §§ 10 and 11 make no provision for an agreement between the parties, but provide only that the district court for the district in which the award was made may vacate or modify the award.

Cortez Byrd argues that because "the venue provisions in the New York arbitration statute were clearly not

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[12] This statute is reprinted in *Clevenger's New York Practice* (1922).

intended to be exclusive," "Congress presumably had the same intent when it patterned the FAA after the New York statute." Pet. Brief 29. In effect, Cortez Byrd is arguing that because the FAA and the New York statute on which it was modeled have **different** venue provisions, they must be read to have the **same** meaning. Not surprisingly, *Shannon v. United States*, 512 U.S. 573 (1994), on which Cortez Byrd relies, does not support this proposition. This Court in *Shannon* noted the "general rule that adoption of the wording of a statute from another legislative jurisdiction carries with it the previous judicial interpretations of the wording." The Court held, however, that no such presumption applied where the statute at issue did not "borrow" the terms of the model statute, but departed from it in "significant ways." 512 U.S. at 581.

Indeed, where language of a model act is stricken or changed, courts presume instead that a different meaning was intended:

> Where a legislature models an act on another statute but does not include a specific provision in the original, a strong presumption exists that the legislature intended to omit that provision. *See, e.g., Bank of America v. Webster*, 439 F.2d 691, 692 (9th Cir. 1971) ("We cannot assume that the omission [in the Guam Code of Civil Procedure of a provision in the California Code on which it was based] was not deliberate or that Guam intended to add by general provision that which it had deleted from specific enumeration."); *Crane Co. v. Richardson Constr. Co.*, 312 F.2d 269, 270 (5th Cir. 1963) (citing *Peterman v. Floriland Farms, Inc.*, 131 So. 2d 479, 480 (Fla. 1961)) (Florida Supreme Court held legislature's adoption

> of only a portion of another state's statute creates strong presumption of legislative intent to omit from Florida law the disregarded portion of the earlier statute).

Kirchner v. Chattanooga Choo Choo, 10 F.3d 737, 738-39 (10th Cir. 1993). Therefore, by striking the broad venue provisions of the New York statute, which permitted judgment to be entered in "any county," and replacing them with the designation of only a single district, Congress evidenced a clear intent to restrict venue.

B. The FAA Venue Provisions Were Intended Neither To Expand nor Limit Venue, but To Establish Procedures and Define Venue in the First Instance

The intention to limit venue to the designated district also is consistent with the intent and purpose of the FAA. As this Court explained in *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265 (1995), the FAA was enacted in 1925 to direct courts to enforce arbitration agreements:

> [T]he basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate. See *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 474, 109 S. Ct. 1248, 1253, 103 L. Ed. 2d 488 (1989). The origins of those refusals apparently lie in " 'ancient times,' " when the English courts fought " 'for extension of jurisdiction – all of them being opposed to anything that would altogether deprive every one of them of jurisdiction.' " *Bernhardt v. Polygraphic Co. of America, Inc.*, 350 U.S. 198, 211, n.5, 76 S. Ct. 273, 280, n.5, 100

> L.Ed. 199 (1956) (Frankfurter, J., concurring) (quoting *United States Asphalt Refining Co. v. Trinidad Lake Petroleum Co.*, 222 F. 1006, 1007 (SDNY 1915, in turn quoting *Scott v. Avery*, 5 H.L. Cas. 811 (1856) (Campbell, L.J.)). . . . [W]hen Congress passed the Arbitration Act in 1925, it was "motivated, first and foremost, by a . . . desire" to change this antiarbitration rule. *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 220, 105 S. Ct. 1238, 1242, 84 L. Ed. 2d 158 (1985). It intended courts to "enforce [arbitration] agreements into which parties had entered," *ibid.* (footnote omitted), and to "place such agreements 'upon the same footing as other contracts,' " *Volt Information Sciences, Inc., supra*, 489 U.S., at 474, 109 S. Ct., at 1253 (quoting *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511, 94 S. Ct. 2449, 2453, 41 L. Ed. 2d 270 (1974)).

513 U.S. at 270-72.

Thus, the venue provisions in the FAA were not enacted to clarify or change existing venue provisions for actions to enforce, vacate, or modify arbitration awards. Rather, because of the widely held view that such a right of action did not exist under common law, the Act not only "declared a national policy favoring arbitration," *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984), but also established a body of procedural rules for implementation of this policy in federal courts. In short, the FAA sought, not to broaden or restrict venue, but to define it in the first instance.

Where venue is defined by the same statute that creates the right, such venue generally is intended to be exclusive. *Bolar v. Frank*, 938 F.2d 377, 378 (2d Cir. 1991) ("Venue for Bolar's right of action is circumscribed by the

very statute that gives her the right to sue in the first place"); *Stebbins v. State Farm Mut. Auto. Ins. Co.*, 413 F.2d 1100, 1102 (D.C. Cir.), *cert. denied*, 396 U.S. 895 (1969) ("The venue of the right of action here in suit was limited by the statute which created the right."). This principle is a variation of the maxim *"Expressio unius est exclusio alterius."* While this maxim certainly must be applied with caution,[13] it has particular application where a statute establishes a new cause of action or remedy not found in common law:

> "When what is expressed in a statute is creative, and not in a proceeding according to the course of the common law, it is exclusive, and the power exists only to the extent plainly granted. Where a statute creates and regulates, and prescribes the mode and names the parties granted right to invoke its provisions, that mode must be followed and none other, and such parties only may act."
>
> The method prescribed in a statute for enforcing the rights provided in it is likewise presumed to be exclusive.

2A Norman J. Singer, *Sutherland Statutory Construction* § 47.23 at 216-17 (5th ed. 1992) (citations omitted).

Therefore, by specifying a particular court for proceedings to confirm, vacate, or modify arbitration awards, Congress intended to exclude others.

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[13] *Ford v. United States*, 273 U.S. 593, 612 (1927) (maxim is " 'often a valuable servant, but a dangerous master to follow' " (citation omitted)).

C. Congress's Intent To Facilitate Enforcement of Arbitral Awards Is Best Served by Limiting Venue of Actions To Vacate or Modify Such Awards

Aside from focusing on the word "may" out of context, courts that adopt a permissive reading of the venue provisions of FAA §§ 9, 10, and 11 most often justify their decisions on grounds of expediency, variously denominated in terms of "judicial economy," "absurd results," "pointless and wasteful burdens," and the like. *E.g., In re VMS Sec. Litig.*, 21 F.3d 139, 144-45 (7th Cir. 1994). Particularly in the face of unambiguous statutory language and other unmistakable evidence of Congress's intent, such considerations are out of place in interpreting venue statutes. As this Court has found, " 'The requirement of venue is specific and unambiguous; it is not one of those vague principles which, in the interest of some overriding policy, is to be given a "liberal" construction.' " *Leroy v. Great Western United Corp.*, 443 U.S. 173, 184 n.18 (1979) (quoting *Olberding v. Illinois Cent. R. Co.*, 346 U.S. 338, 340 (1953)). Even in matters of expediency, however, a permissive reading of §§ 10 and 11 falls short.

1. *Venue should not be relitigated.* The "statutory policy of rapid and unobstructed enforcement of arbitration agreements" established by the FAA, *Moses H. Cone*, 460 U.S. at 23, is best served by interpretation of the venue provisions of §§ 10 and 11 as they were intended – that is, as defining the exclusive venue for actions to vacate or modify arbitral awards. If the parties are unable to reach agreement as to the location for an arbitration hearing, the dispute is resolved by the arbitrator, taking into account such matters as the convenience of the parties,

witnesses, and the arbitrator, and the availability of records and other evidence. *See, e.g.*, AAA Construction Industry Dispute Resolution Procedures F-9. This determination by the arbitrator (or agreement of the parties) as to the most convenient forum should not be relitigated in district court.

If the statute permitted a party seeking vacatur of the award to select a different forum for its own convenience, the entire issue of venue would be reopened. Following a race to the courthouse, courts would be faced with motions and possible appeals with respect to the discretionary "first-to-file" rule and the more convenient forum. To avoid a "pointless and wasteful burden on the supposedly summary and speedy procedures prescribed by the [FAA]," *Moses H. Cone*, 460 U.S. at 27, the arbitrator's or parties' determination of the most appropriate forum for resolution of the dispute should be foreclosed from further litigation.

As the *Enserch* court held:

> Congress' choice of the U.S. court in the district where the award was made as the appropriate forum is consistent with the character of arbitration as a dispute resolution device. Arbitration is "an opportunity generally to secure prompt, economical and adequate solution of controversies." *See Wilko v. Swan*, 346 U.S. 427, 438, 74 S. Ct. 182, 188, 98 L.Ed. 168 (1953) [*overruled on other grounds, Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 466 (1989)]. The district wherein the award is made presumably is a reasonable forum for effecting such a prompt, economical, and adequate solution.

656 F. Supp at 1165 n.8. The court in *Central Valley Typographical Union No. 46 v. McClatchy Newspapers*, 762 F.2d 741, 744 (9th Cir. 1985), similarly noted: "A rule laying venue where the arbitration is held . . . recognizes that the parties already have indicated that the location is mutually convenient to settle their dispute."

2. *Exclusive venue does not lead to "absurd results."* Contrary to Cortez Byrd's arguments and those of a number of courts seeking to justify a permissive reading of the statutes,[14] exclusive venue under §§ 9 and 10 of the FAA does not lead to "absurd results." According to this "absurdity" theory, a mandatory reading of §§ 9 or 10 would render § 3 of the FAA "meaningless," because a § 3 "stay" order entered in a forum other than where arbitration would occur could only lead to ultimate dismissal.[15] The resulting inability of the court with jurisdiction over the controversy to "proceed[ ] with the matter to its conclusion" is said to be "wasteful" and inconsistent "with principles of judicial economy."[16]

These arguments disregard the fundamental principle that venue requirements must be satisfied only at the institution of the action and that the court retaining jurisdiction does not lose venue by virtue of later developments. *LaPrade v. Kidder Peabody & Co.*, 146 F.3d 899, 906

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[14] *E.g., P&P Indus., Inc. v. Sutter Corp.*, 179 F.3d 861, 868-70 (10th Cir. 1999); *In re VMS Sec. Litig.*, 21 F.3d 139, 144-45 (7th Cir. 1994).

[15] *E.g., P&P Indus.*, 179 F.3d at 869; *VMS*, 21 F.3d at 144; *Purdy v. Monex Int'l Ltd.*, 867 F.2d 1521, 1523 (5th Cir. 1989), *cert. denied*, 493 U.S. 863 (1989).

[16] *E.g., VMS*, 21 F.3d at 145.

n.4 (D.C. Cir. 1998), *cert. denied*, 119 S. Ct. 804 (1999). As the court held in *LaPrade*, "once venue was established in regard to institution of the lawsuit, *see Minnesota Mining & Mfg. Co. v. Eco Chem., Inc.*, 757 F.2d 1256, 1264 (Fed. Cir. 1985), the district court did not lose venue because the parties arbitrated elsewhere." *Id.* Similarly, in *Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 706 (2d Cir. 1985), *cert. denied*, 475 U.S. 1067 (1986), the court held: "Once a federal court has subject matter jurisdiction over an action, it may confirm an arbitration award even though it was not the district where the award was granted."

In *Baltimore & O. C. T. R. Co. v. Wisconsin Cent. Ltd.*, 154 F.3d 404 (7th Cir. 1998), the court explained:

> [T]here is another [jurisdictional issue]: whether the district judge had jurisdiction over the case when it came back to him after the arbitration. There is no doubt that he had jurisdiction over it when it was originally filed and that he was empowered by the Federal Arbitration Act to stay it pending arbitration. 9 U.S.C. § 3. The issuance of a stay, as distinct from an order of dismissal, implies that the proceeding in the court that issued the stay remains on the court's docket, albeit in a state of suspended animation. As long as the case remains before the court, the judge has the power to issue any order that is within his power to issue in a case of that sort. And that includes an order confirming an arbitration award. . . .

Id. at 407.

Indeed, this Court more than fifty years ago observed that it is not "open to question that, where the court has authority under the [FAA] . . . to make an order for

arbitration, the court also has authority to confirm the award or to set it aside for irregularity, fraud, ultra vires, or other defect." *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263, 275-76 (1932). Because the court entering a stay order under § 3 retains jurisdiction over the proceeding and does not "lose venue," the concern that exclusive venue would render § 3 a nullity is unfounded.

The same principle defeats Cortez Byrd's argument that if the arbitration agreement designates a different forum for confirmation proceedings than the district where the arbitration hearing occurred, competing §§ 9 and 10 motions could not be heard in the same court. Pet. Brief 31-32. Once a proceeding under either section is filed in the appropriate district, the court thereby obtaining jurisdiction may enter an order under either provision.[17] Therefore, the supposition that exclusive venue would lead to "absurd results" simply has not been well considered.

3. *Exclusive venue leaves no "venue gap."* Cortez Byrd also contends that an exclusive interpretation of the FAA's venue provisions would create an impermissible "venue gap." Cortez Byrd argues that under this interpretation, in the absence of an agreement, "FAA as originally enacted would not have provided for the enforcement of any arbitrations conducted outside this country. . . . " Pet. Brief at 16. This argument is without

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[17] In this sense, Cortez Byrd's hypothetical is no different from a claim and compulsory counterclaim that would be subject to different venue provisions, if filed as separate actions. Once a complaint is filed in a proper forum, the compulsory counterclaim is not subject to a venue objection.

foundation. Although Congress certainly contemplated arbitration of international disputes, Cortez Byrd has been unable to demonstrate that the Act was intended to authorize courts in the United States to enter orders confirming, vacating, or modifying foreign arbitral awards.

"It is a longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.' " *E.E.O.C. v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (citation omitted). Even the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), 9 U.S.C. § 201 *et seq.*, does not authorize courts in the United States to vacate or modify foreign arbitral awards. *Tesoro Petroleum Corp. v. Asamera (South Sumatra) Ltd.*, 798 F. Supp. 400, 404-05 (W.D. Tex. 1992). Rather, the Convention provides that if a proceeding is brought to enforce an award, enforcement may be "refused" if the requisite showing is made. Convention Art. V.[18]

III. AMENDMENTS TO 28 U.S.C. § 1391 WERE NOT INTENDED TO MODIFY THE EXCLUSIVE VENUE UNDER §§ 10 AND 11 OF THE FAA

Where specific venue statutes are intended to be exclusive, they cannot be supplemented by amendments to general venue statutes, absent a "clear intention" to do

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[18] In contrast, the Convention authorizes a "competent authority of the country in which the award was made" to "set aside" the award. Convention Art. V ¶ 1(e).

so. *Radzanower v. Touche Ross & Co.*, 426 U.S. 148 (1976). As this Court held in *Radzanower*:

> It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum. "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Morton v. Mancari*, 417 U.S. 535, 550-51, 94 S. Ct. 2474, 2482, 41 L. Ed. 2d 290, 301. "The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all." T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 98 (2d ed. 1874).
>
> . . . Thus, unless a "clear intention otherwise" can be discerned, the principle of statutory construction discussed above counsels that the specific venue provisions of § 94 are applicable to the respondent bank in this case. *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 77 S. Ct. 787, 1 L. Ed. 2d 786.

426 U.S. at 153.

No post-1925 venue statute or amendment expresses any intention to modify the exclusive venue provisions of

§§ 10 and 11 of the FAA. In fact, the general venue provisions of 28 U.S.C. § 1391 expressly provide that they apply "except as otherwise provided by law." Therefore, rather than a clear intention to control specific venue statutes, 28 U.S.C. § 1391 indicates an intention to preserve venue schemes under existing special statutes.

Cortez Byrd does not address this principle of *Radzanower*. Rather, Cortez Byrd cites *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966) ("*Suarez*"), and *Monument Builders v. American Cemetery Ass'n*, 891 F.2d 1473, 1477 (10th Cir. 1989), *cert. denied*, 495 U.S. 930 (1990), for the proposition that "special venue statutes are supplemented by [the] more liberal general venue statute, absent specific contrary indication." Pet. Brief at 19 (quoting *Monument Builders*). *Suarez* does not so hold, and this quotation from *Monument Builders* is simply a mischaracterization, in *dicta*, of the *Suarez* holding.

Were it not for Cortez Byrd's description of *Suarez* as "indistinguishable" from this case, the decision would merit little discussion. The issue in *Suarez* was expressly limited to the effect of the definition of corporate "residence" found in 28 U.S.C. § 1391(c) on the previously enacted specific venue provision in the Jones Act, which permitted suit where the defendant "resides." The Jones Act venue statute provided that venue "shall be under the court of the district in which the defendant employer **resides** or in which his principal office is located." 46 U.S.C. § 688. The general venue statute provided:

> [A] corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and **such judicial district shall be regarded as the residence of such corporation for venue purposes.**

Former 28 U.S.C. § 1391(c) (emphasis added) (amended 1988). The sole issue in *Suarez* was whether "this definition of residence is applicable to the Jones Act venue provision." 384 U.S. at 204.

The Court found that this redefinition of corporate residence was intended "to bring venue law in tune with modern concepts of corporate operations" and saw nothing in the legislative history of the Jones Act "to indicate that its framers meant to use 'residence' as anything more than a referent to more general doctrines of venue rules, which might alter in the future." Accordingly, the Court concluded:

> [T]he liberalizing purpose underlying . . . enactment [of § 1391(c)] and the generality of its language support the view that it applies to all venue statutes using residence as a criterion, at least in the absence of contrary restrictive indications in any such statute.

384 U.S. at 204-05.[19]

The *Suarez* decision has no application to the issue before this Court. Sections 10 and 11 of the FAA do not

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[19] The patent venue statute at issue in *Stonite Prods. Co. v. Melvin Lloyd Co.*, 315 U.S. 561 (1942), and *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222 (1957), was held to be an exception to this ruling on the basis that its legislative history contraindicated an expanding definition of residency.

base venue on the residence of any party.[20] Moreover, contrary to Cortez Byrd's arguments, the *Suarez* holding cannot be generalized into a "presumption that special venue statutes are supplemented by the general venue statute." Pet. Brief 24. Rather, under the later *Radzanower* decision, specific venue statutes control over general venue statutes unless a contrary intention is clearly shown. No such showing can be made.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Eleventh Circuit should be affirmed.

Respectfully submitted,

EDWARD P. MEYERSON
Counsel of Record
SUSAN S. WAGNER
BERKOWITZ, LEFKOVITS, ISOM & KUSHNER
A Professional Corporation
SouthTrust Tower
420 North 20th Street, Suite 1600
Birmingham, Alabama 35203-5202
(205) 328-0480

Counsel for Respondent

[20] In fact, since the *Suarez* decision, 28 U.S.C. § 1391(c) has been further amended to provide that its definition of residency applies only to "venue under this chapter [*i.e.*, Title 28, Chapter 87]."